

**Letter of Findings: 02-20130279P
Corporate Income Tax Penalty
For the Year 2011**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Underpayment Penalty – Corporate Income Tax.

Authority: IC § 6-3-4-4.1; IC § 6-3-4-4.1(d); IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1; IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer asks the Department to exercise its discretion to abate a ten-percent underpayment penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which reports and pays Indiana corporate income tax. Taxpayer made estimated payments for 2011. The Department of Revenue ("Department") assessed Taxpayer an "underpayment" penalty for taxes paid during that period. Taxpayer disagreed with the penalty and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Underpayment Penalty – Corporate Income Tax.

DISCUSSION

Taxpayer protests the imposition of a ten-percent penalty imposed because of Taxpayer's failure to make sufficient estimated tax payments as required pursuant to IC § 6-3-4-4.1(d).

The burden of proving a proposed assessment incorrect—including a penalty assessment—rests with the taxpayer, as provided under IC § 6-8.1-5-1(c).

IC § 6-3-4-4.1 provides in relevant part:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25 [percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

Taxpayer does not dispute the fact that it underpaid the amount of corporate income tax owed for 2011.

However, Taxpayer explains that there are mitigating factors which warrant exercise of the discretion permitted under IC § 6-8.1-10-2.1. Taxpayer explains that during the time period in which the tax was due, its corporate offices were being moved from one state to another and that it experienced substantial employee turn-over, and that the oversight was promptly remedied.

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the

taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Taxpayer erred when it underpaid its estimated corporate income tax liability. However, there is insufficient information to establish that Taxpayer's position was so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the penalty should be abated.

FINDING

Taxpayer's protest is sustained.

Posted: 08/28/2013 by Legislative Services Agency
An [html](#) version of this document.